

Resolution

Of the

California Fair Political Practices Commission

The California Fair Political Practices Commission, pursuant to its statutory responsibility for the impartial and effective administration and implementation of the Political Reform Act, and in order to fully and fairly respond to litigation challenging the provisions of that Act, does hereby resolve as follows:

Whereas, Government Code sections 84503 and 84506 require any committee paying for an advertisement supporting or opposing a ballot measure to identify on the face of the advertisement the two largest contributors to the committee who have cumulatively contributed \$50,000 or more to the committee; and

Whereas, the United States Court of Appeals for the Ninth Circuit, in *American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979 (2004), struck down the Nevada statute requiring on-publication identification of contributors to committees making expenditures for political advertisements, on the ground that the statute impermissibly infringed on the committee's First Amendment rights; and

Whereas, the Fair Political Practices Commission has been named defendant in a lawsuit on file in the United States District Court for the Eastern District of California, *California Republican Party, California Democratic Party, et al., v. FPPC, et al.*, No. CIV-04-2144 FCD PAN, in which plaintiffs challenged Government Code sections 84503 and 84506 as unconstitutional under *Heller*; and

Whereas, plaintiffs in the current litigation are general purpose political party committees and, as such, have been in existence for more than one election cycle and have received large contributions in the past from sources who may not support the current political expenditures with which they are identified pursuant to Government Code sections 84503 and 84506; and

Whereas, the District Court granted a preliminary injunction enjoining the Fair Political Practices Commission from enforcing the statutes against the plaintiffs, political party committees, and any other similarly situated general purpose political party committees; and

Whereas, the resources of the Commission and the State of California are limited; and

Whereas, enforcing Government Code sections 84503 and 84506 against general purpose ballot measure committees would subject the Commission to further costly litigation, which would be futile under the authority of *Heller*; and

Whereas, the Commission would have to expend staff resources defending the statutes in future challenges and, if unsuccessful, potentially be liable to pay the attorneys' fees of successful plaintiffs;

Now, therefore, be it resolved that, although the Commission may not necessarily agree with the *Heller* decision, the *Heller* decision is governing law and the Fair Political Practices Commission hereby adopts as Commission policy that Government Code sections 84503 and 84506 are unlawful as applied against general purpose ballot measure committees; and

Be it further resolved that the Commission shall not enforce Government Code sections 84503 and 84506 against general purpose ballot measure committees unless and until the authority of the *Heller* case is overruled by the United States Court of Appeals for the Ninth Circuit, the United States Supreme Court, or rejected by the California Supreme Court or California Court of Appeal.

Subscribed this 21st day of March, 2005.

Liane Randolph, Chairman

A. Eugene Huguenin, Jr., Commissioner

Philip Blair, Commissioner

Ray Remy, Commissioner

Sheridan Downey III, Commissioner